

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

No. 3:19-CR-30002-002

WALTER ANTONIO ALVAREZ

DEFENDANT

OPINION AND ORDER

Defendant Walter Antonio Alvarez filed a fifth motion (Doc. 120) to modify his sentence pursuant to the First Step Act amendments to 18 U.S.C. § 3582(c). The motion will be DENIED.

On October 9, 2020, Defendant filed his first motion to modify his sentence, which was denied on December 3, 2020, because the 3553(a) factors did not support modification. On January 11, 2021, Defendant filed his second motion to modify his sentence citing identical grounds to those identified in his first motion. This second motion was denied on July 1, 2021. Defendant filed a third motion to modify his sentence on September 13, 2021, which was denied on September 29, 2021 after a consideration of the § 3553(a) factors. Defendant's fourth motion to modify his sentence was filed on December 6, 2021, and though it did state new grounds for modification in that Defendant had suffered a mild stroke since the denial of his third motion, on December 14, 2021, the Court once again denied the motion after a consideration of the § 3553(a) factors.

Because this is Defendant's fifth motion for a § 3582(c) sentence reduction, and because Defendant cites identical reasons for a sentence reduction in this motion as he has in prior motions (his age, preexisting health conditions, his stroke, and the threat of COVID-19), the Court will construe Defendant's motion (Doc. 120) as a motion for reconsideration, the timeliness of which is governed by Federal Rule of Appellate Procedure 4(b). *See United States v. Mofle*, 989 F.3d

646, 648 (8th Cir. 2021) (holding that a second motion for a § 3582(c) sentence reduction based on the same grounds addressed by previous court order should be treated as a motion for reconsideration subject to Rule 4(b)'s timeliness requirements.)

Under Rule 4(b), a defendant must file a motion for reconsideration within 14 days of denial of his previous motion, though the court may extend this time period by an additional 30 days. Here, 70 days elapsed between the Court's most recent order denying Defendant's motion to modify sentence and the filing of his motion for reconsideration. As such, Defendant's motion is untimely.

IT IS THEREFORE ORDERED that Defendant's motion (Doc. 120) will be DENIED.

IT IS SO ORDERED this 1st day of April, 2022.

P.K. Holmes, III

P.K. HOLMES, III
U.S. DISTRICT JUDGE